In The

United States Court of Appeals

For the Ninth Circuit

No. 18,252

The Superior Oil Company,
Petitioner,

v.

Federal Power Commission,
Respondent.

REPLY BRIEF FOR PETITIONER, THE SUPERIOR OIL COMPANY

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FILED

MAR 30

FRANK H. SCHMID, CLERK

April 1, 1963

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

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The Brief of Respondent herein states that the only issue before this Court is the validity of the Commission's Regulations promulgated in its Order 242 and its antecedent Order 232-A. This presentation of the issue is only partially correct. The full issue here is whether the Federal Power Commission has authority under the Natural Gas Act to reject, by summary action and order of its Secretary, an application for certificate of public convenience and necessity and the related rate schedule which meet all the formal filing requirements for same. The stated basis for such rejection was that the application for certificate of public convenience and necessity and the rate schedule were based on contracts, the provisions of which might permit future changes in price in amounts determinable by future events.

Respondent argues (Brief p. 9) that it has such authority under the Act because its contested orders, and the regulations embodying same, are "reasonable". This argument ignores the primary and fundamental question, *i.e.*, did Congress under the Natural Gas Act delegate such power to the Commission. Only when, as, and if this preliminary question has been answered in the affirmative does the question of "reasonableness" of the Commission's orders, including the matter of supportable findings justifying such orders, become material. The cart-before-the-horse approach of Respondent should not be allowed to obscure the fundamental fact that unless the Natural Gas Act delegates the rule and regulation-making authority contended for by Respondent, such rule and resulting regulation are void.

I.

Somewhat belatedly (Brief, p. 29 et seq.) Respondent does claim authority under the Act for such rule making.[1] The purported authority is first sought under Section 5(a) of the Natural Gas Act. This section[2] permits the Commission to initiate *a hearing* to *determine* whether any rate, charge, or classification *then being charged* by a natural gas company, or any rule, regulation, practice, or contract *affecting* same is unjust, unreasonable, unduly discriminatory or preferential, and, *if so,* to fix by order the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed. Respondent argues that since this section permits contracts affecting existing rates to be modified *after a hearing,* its authority to issue rules of general applicability providing what contracts may and may not provide is clear. Certainly natural gas companies' contracts are

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[1] See Petitioner's Brief, p. 8-18, 26-27 and 30-42 on lack of such authority.

[2] Section 5(a) is quoted in full in Petitioner's Brief p. 3a-4a.

subject to Commission review and possible revision under this section, but *only after a hearing* instituted to determine whether such rates are unjust, unreasonable, unduly discriminatory, or preferential, and *only after a finding* of the Commission, *supported by substantial evidence* presented in that hearing, that such rate, charge, and classification *are in fact* unjust, unreasonable, unduly discriminatory, or preferential.[3]

Respondent also relies on Section 4(e) which authorizes the Commission *after a hearing* to consider the justness and reasonableness of *changed rates*.[4] Neither Section 4(e) nor 5(a) gives any support to Order 242[5] which promulgates the Regulations of the Commission relied upon herein.[6] Said Order and Regulations have application neither to *existing* nor *changed* rates to which Sections 4(e) and 5(a) are limited. The Order applies to new contracts and amendments which of necessity set initial or unchanged rates.

The need to construe these sections no longer exists. Judicial limitation on Commission authority under these sections is clear. Without equivocation it denies the sought-for authority of the Commission. In *Mobile*[7] the Supreme Court found that the Natural Gas Act evinces no purpose to abrogate private contracts as such (p. 338); that the public interest is served by permitting the relations between the parties to a gas sale agreement to be established

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[3] The necessity for a hearing is covered in Petitioner's Brief, p. 8-18. 30, 35 and 36-41. See also: *Colorado-Wyoming Gas Co.* v. *FPC* (1945) 324 U.S. 626, 634, 65 S. Ct. 850; *U.S.* v. *Carolina Freight Carriers Corp.* (1942) 315 U.S 475, 488-489, 62 S. Ct. 722; and *Braniff Airways, Inc.* v. *CAB* (C.A.D.C., 1962) 306 F. 2d 739, 742-743.

[4] Section 4 is quoted in full in Petitioner's Brief, p. 1a-3a. Section 4(e) is at p. 2a.

[5] Petitioner's Brief, p. 13a-16a.

[6] R. 121.

[7] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, (1956) 350 U.S. 332, 76 S. Ct. 373. See Petitioner's Brief, p. 13-17, 20, 26, 35, 40, 47 and 52.

initially by contract (p. 339); and that the Act neither grants nor defines the initial rate-setting powers of natural gas companies (p. 340). The filing of a change in rate schedule under Section 4 does not institute a proceeding to review; such a proceeding can only be instituted by the Commission itself under Section 4(e) (p. 342). The Act presumes the capacity of natural gas companies to make and change rates and contracts, subject only to being set aside if found unlawful after a hearing instituted by the Commission: "The initial rate making and rate changing powers of natural gas companies remain undefined and unaffected by the Act." (p. 343)

In *Memphis*[8] the Act was again construed. Congressional concern "for the legitimate interests of natural gas companies in whose financial stability the gas-consuming public has a vital stake" was recognized and the Court said further:

> "Business reality demands that *natural gas companies should not be precluded by law from increasing the prices of their product* whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance * * *." (p. 113) (Emphasis added.)

And:

> "What has been said disposes of the question whether *anything* in the Natural Gas Act forbids a seller to change its rates pursuant to Section 4 procedures * * *" (p. 114) (Emphasis added.)

If natural gas companies *by law* should not be precluded from increasing their prices, and were not so precluded by the Natural Gas Act, a rule which does preclude this is clearly beyond the Act and cannot be adopted as necessary to carry out the provisions of the Act. The rule which prohibits contractual consent to a rate change precludes a

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[8] *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division* (1958), 358 U.S. 103, 79 S. Ct. 194. See Petitioner's Brief, p. 17-18, 25-26 and 39-40.

change, for under *Mobile, supra,* if there is a contract, changes not provided for therein cannot be sought by the seller. Respondent says it does not have to *tolerate* contracts which may hamper its regulations. This is tantamount to saying it does not have to regulate under the Natural Gas Act as enacted by Congress but may re-write that Act as it sees fit. (See Petitioner's Brief, p. 40-41)

In *Willmut Gas & Oil Co.* v. *Federal Power Commission,* (C.A. D.C., 1961), 294 Fed. 2d 245, 250-251, cert. den. 368 U.S. 975, 82 S. Ct. 477, it was held that a natural gas company's rate-making and rate-changing power was such that the Commission may not refuse to file a tendered new schedule showing changes in rates, nor summarily reject or disallow the new schedule without a hearing. *Mississippi River Fuel Corp.* v. *Federal Power Commission,* (C.A. 3, 1953), 202 Fed. 2d 899, 900-903, writ dismissed 345 U.S. 988, 73 S. Ct. 1138, held the same thing. (Petitioner's Brief, pp. 9-13).

Respondent also relies on Section 7 of the Act for authority to make the regulations promulgated in its Order No. 242. This is equally lacking in merit. In *Texaco, Inc.* v. *Federal Power Commission,* (C.A. 5, 1961), 290 Fed. 2d 149, dealing with a situation where under Section 7(e) the Commission, after a hearing, had found that a reduction in the initial price of the producers' contracts was required in the public interest, the Court sustained the initial price reduction but specifically held that conditioning authority under Section 7 cannot limit the producers' right to file for the contractually established price (p. 156). In other words, modification by the Commission under its conditioning authority in a certificate proceeding does not *change* or *alter* the contractual relations *between the parties* and there is "no authority for holding that a producer does not have the right immediately to file" an increase in rates. This has

also been held most recently by the same Court in *H. L. Hunt et al.,* v. *Federal Power Commission,* (C.A. 5, 1962), 306 Fed. 2d 334, rehearing pending. There, in issuing a temporary certificate under Section 7(c) the Commission had inserted a condition, the effect of which was to preclude future price increases without express Commission approval.[9] Striking down such condition the Court said:

> "We hold that the Commission may not thus effectually condition-out a statutory right which Congress has prescribed." (p. 335-336).

The Court regarded the attempted condition as one having potential "awesome" consequences, thus:

> " * * * if the Commission may set aside Section 4 and the rights, privileges, and protections which it accords to a natural gas company subject to all of the obligations of the Act, then there is no end to the legislative tampering which the Commission may undertake." (p. 344).

The effect of Order 242 permitting the Commission's Secretary to reject applications for certificates of public convenience and necessity and rate schedules without a hearing (because of their substance) is almost exactly what *Mississippi River Fuel Corp.* v. *Federal Power Commission, supra,* held the Commission had no authority to do. It was there held that because of its quasi-judicial nature the Commission might expeditiously employ some form of summary dismissal procedure but it could not do so under the present Act, *i.e.*

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[9] There is no issue here of whether Sections 4, 5 or 7 of the Act "curtail" the authority of the FPC under Section 16. (Respondent's Brief, p. 36 et seq.) The issue here is whether the authorities granted in those Sections of the Act for dealing with rates and certificates in specific manners provide the basis here claimed by FPC for the exercise of its rule-making power under Section 16 as has been done here. The Courts have held that they do not. (Petitioner's Brief, p. 9-13, 34-42).

> "But the statute which defines the powers of the Commission in natural gas matters makes no provision for any such procedures." (p. 902).

As pointed out in Petitioner's original Brief (p. 26-27), the Commission has heretofore recognized its lack of statutory authority to do just what it now proposes to do by rule. In its 36th Annual Report to Congress (1956), the Commission requested that Congress enlarge its authority by amending the Act to proscribe indefinite pricing clauses. The specific recommendation is quoted in Petitioner's original Brief (p. 26-27), and the effect of Congress' failure to act thereon is there discussed. Notwithstanding such request and its reiteration in each subsequent Annual Report to Congress through 1960, Congress has failed to grant such request. The Commission's most recent Annual Report to Congress (1962, p. 16) recognizes again its lack of authority to issue Order 242 by conceding that Section 7(c) mandatorily requires a hearing on all applications for certificates. That request was:

> "10. *Notice and opportunity for hearing in certificate cases.* — Amend Section 7(c) to eliminate the mandatory hearing requirement, substituting in lieu thereof a provision for due notice and opportunity for hearing."

In the light of these admissions by the Commission, it seems frivolous for Respondent to here contend that the Act, without the requested amendments by Congress, permits a rule which does proscribe indefinite escalation provisions and does eliminate the mandatory hearing requirements of Section 7(c). It is noteworthy that this last Report to Congress was made at the conclusion of the Commission's fiscal year operations terminating June 30, 1962, and after its promulgation of Order 242.

II.

The Commission orders and the regulations flowing therefrom must be tested by this Court in the light of the reasons substantiating them announced by the Commission in adopting such orders. *Securities & Exchange Commission* v. *Chenery Corp.* (1942), 318 U.S. 80, 63 S. Ct. 454. In connection with Order 232 the Commission found that "indefinite escalation clauses" as defined have contributed to instability and uncertainty concerning prices of gas and service expansion by natural gas companies (Respondent's Brief, p. 50). In its Order 232-A the above finding in Order 232 was reiterated along with the statement that indefinite escalation provisions are in general contrary to the public interest (Petitioner's Brief, p. 18a). In Order 242 (Petitioner's Brief, p. 13a-16a) the Commission found, that as held by it in the *Pure Oil Company* case, 25 FPC 383, indefinite escalation clauses are contrary to the public interest and that increases in producer prices triggered by indefinite escalation clauses have resulted in a flood of almost simultaneous filings. That such filings bear no apparent relationship to the economic requirements of the producers who file them, but that the Natural Gas Act contemplates that prices to be just and reasonable be related to economic need. That filings under indefinite escalation clauses have created a significant portion of the administrative burden under which the Commission is laboring, and that the complexity of indefinite price clauses requires the Commission to spend an undue amount of time in their interpretation and application. "Accordingly, in protecting the public against waves of increases which have no defensible basis, we also serve the need — which we believe we should take into account — of making the task of regulation more manageable."

Significantly, and for the reason that there was no evidentiary hearing, the Commission submits nothing but conclusions of its own for the justification of these orders. Its *ipse dixit* alone is offered for consideration by the reviewing court. This is totally insufficient for, as said in *Burlington Truck Lines, Inc. v. United States* (1962), ... U.S. ..., 83 S. Ct. 239, 245:

> "Expert discretion is the life blood of the administrative process, but 'unless we make the requirements for administrative action strict and demanding, expertise, the strength of modern government, can become a monster which rules with no practical limits on its discretion.' * * * *The agency must make findings that support its decision, and those findings must be supported by substantial evidence.*" (Emphasis added)

It is noteworthy that the only evidentiary basis even referred to in the orders is that based upon the record in the *Pure Oil Company Docket G-17930,* Opinion 341. Superior was not a party to that proceeding and under established law is not bound by the record in that case. As pointed out in our original Brief (p. 9-14, 30-34) the application of that record to this proceeding would totally deprive Superior of due process of law for it would have no opportunity to cross-examine or rebut the evidence there presented.

Over and above the fact that if evidence had been allowed, and the usual quasi-judicial process of examination, cross-examination, and rebuttal permitted, the "findings" of the Commission would have been shown wholly unsupportable, the findings and order are inconsistent within themselves:

First, the Commission finds that indefinite pricing clauses are contrary to public interest but then prescribes such a clause in Section (c) of Section 154.93 (R. 121).

Second, the Commission finds that there must be economic justification for rate increases to be *filed*, but as pointed out in Respondent's Brief (p. 15-16), the rule would not proscribe any number of fixed escalations nor limit the amount of such escalations. Certainly there is no economic justification for price increases of 5¢ per MCF every 1, 2, 3, or 4 years. Yet, this is permitted. Moreover, economic justification for a FILING is not required by the Act. There is a clear distinction between what is required by the Act to *make* an increased rate filing, and what is required to *sustain* that filing if it is suspended and hearing called to determine its "justness and reasonableness". The ONLY restriction on *filing* under the Act is whatever *contract* restriction is undertaken by the parties as disclosed by the authorities cited in I, *supra.*

Third, the Commission says that indefinite pricing provisions contribute to instability of prices and service expansion. What could lead to greater instability of prices than annual and large increased filings. It is most significant that the pipe line and distribution industries have grown from relative insignificance to towering giants, employing indefinite pricing provisions as an adjunct to fixed price escalations and relying upon producer contracts containing such provisions. The hard facts of experience cannot be overcome by administrative expertise.

Fourth, the Commission says it has been over-burdened by rate increase filings, a significant portion of which result from flexible pricing. If flexible pricing is to be eliminated, and as shown hereinafter that permitted by Sec. 154.93(c) is of no protection, then the suggestion of Respondent (Br. p. 16) that a producer should bargain for higher and more frequent periodic increases, will do nothing to alleviate the burden. Moreover, "Arguments

that tribunals are too busy to do their duty (citation omitted) or that it is more expeditious not to recognize rights, are not agreeable ones." *NLRB* v. *Trancoa Chemical Corp.* (C.A. 1, 1962), 303 Fed. 2d 456, 461-462. See *LaBuy* v. *Howes Leather Co.* (1957) 352 U.S. 249, 259, 77 S. Ct. 309.

The Commission also says that the flexible pricing provisions are too complex and unduly burden it. Every agency must face threshold questions concerning its jurisdiction. Neither rule nor regulation can eliminate this. Superior's contracts cited in Respondent's brief (p. 8) belie Respondent's contention. The price redetermination clause requires agreement of the contracting parties personally or as the result of arbitration. This places no burden on Respondent at all. The favored nation clause requires only a comparison of gas and conditions. This, in the light of Respondent's claimed expertise and experience, seems relatively simple.

III.

Respondent's Brief would further justify these orders on the ground that they are reasonable. Reasonable with reference to what? The order would purportedly promote the stability and certainty of prices of gas and, yet, according to Respondent's Brief, the order does not proscribe short term contracts nor any number of definite price increases, nor the amount of definite increases. (Respondent's Brief, p. 15-16). If this is true, price uncertainty is increased by the order rather than decreased. In any event whether price certainty and stability of supply is increased or not, the substantial question and issue of fact concerning this can be properly determined only on the basis of evidence presented.

Respondent's Brief (Page 17) points out that in the light of Order 242 companies are much more able to project, even over a 20-year contract period, what specific escalations would be needed to file for rates the Commission would approve. Substantiation for that statement is to be found only in counsel's words. Moreover, prediction as to what rates the Commission will approve is less certain than predictions based upon the stars. The Commission has indicated no standard for determining the justness and reasonableness for determining any rate increase.[10] Moreover, as recently as February 4, 1963, the Commission suspended for the full five months period 39 rate increases, all based on fixed escalation provisions, and all below the Commission's stated applicable area prices, *Mills Bennett Estate,* Docket RI63-308, Order issued February 4, 1963, not yet officially reported. Such action certainly eliminates any predictability in Commission rates to be allowed.

Respondent contends that the rate characteristics of a contract should be considered in certificate proceedings; yet the Commission itself in boiler plate language in nearly every certificate issued, states:

> "Further, our action in these procedings shall not foreclose or prejudice any future proceedings or ob-

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[10] See *H. L. Hunt, et al.,* Commission Opinion No. 369, 28 FPC ......, 46 PUR 3d 62. Dissenting opinion of Commissioner Ross:

> "The specter of triggering is a problem simply because the Commission is unsure as to all the standards which should be applied in 4(e) cases pending the establishment of firm area rates. * * * it would be far better to meet the triggering problem head on by concentrating now on the standards to be employed in 4(e) cases than to put parties to the risk of presenting a *prima facie* case on a subject as unsettled as producer rate increases." (Mimeo. p. 5)

Of the tens of thousands of rate increases filed by producers (other than for tax increases) we have found only *one* in which FPC made the statutory finding of "just and reasonable" or "unjust and unreasonable". *Re Pan American Petroleum Corp.,* 19 FPC 463 (1958). That decision gave no guidance as to the standards which would be used to adjudge economic justification.

jections relating to the operation of any price or related provisions in the gas purchase contract herein involved."

Respondent says that the pricing provisions permitted are reasonably sufficient for the producers' needs in the future (Brief, p. 9 and 14-17). This, of course, is only counsel's opinion, and is belied by the finding of Order No. 232-A that some form of indefinite or flexible pricing is necessary to permit the producer in a long term contract (which the public interest requires) to cope with changing economic conditions. The indefinite provision permitted is of no benefit to producers. First, it can only be employed during a period of five or more years when there is no other provision for price change. This would require the producer to GUESS WHEN the economic conditions during a span of 20 years are to change most, and then eliminate for that 5-year period any other price increase provision. Moreover, the increased price could not be used for price redetermination UNTIL it had been through the "just and reasonable" hearing in the Commission and a probable court review thereof had been completed. The "well nigh interminable delay" in such proceedings would postpone use of such a price so long that any relief gotten would lag behind economic needs for many years and be totally inadequate. Such delay would not be within the Commission's control, for any intervener in a rate increase hearing could seek court review and thus keep "in issue" an increased price approved by the Commission. Furthermore, the "justness and reasonableness" of the higher price would have been determined on the circumstance of one or more *other* producers, which circumstances might be wholly different from those of Petitioner.

Respondent contends that the orders are reasonable in the light of its accumulated experience and mature consid-

eration,[11] however it is to be noted that shortly after it sought to apply Order No. 242 it found that it had not considered at all certain proscribed clauses (Brief, p. 40). In the matter of *The Atlantic Refining Company,* Docket CI63-576 (February 21, 1963), it was there said in granting a rehearing to Atlantic from its prior summary rejection action,

> "As Atlantic recognizes, the so-called 'Memphis type' escalation clause in its contract clearly is prohibited by section 154.93. But we agree that the propriety of such a provision, which is not typically found in contracts between independent producer and pipelines, was not a matter which engaged the Commission's consideration at the time it adopted its present rule. Moreover it is clear that at least some of the objections which we have had with indefinite escalations are not here presented".

How can this Court, or the parties, know how many and what other types of proscribed clauses were proscribed without consideration?

Respondent says Petitioner could have sought waiver of the rules in this instance (Brief, p. 17 and 38). This is a most illusory "right" and would be appropriate only if the validity of the rule itself was conceded. If waiver is to be granted in a changed circumstance, there can never be a change of circumstance between the time the proscribed clause is included in the contract and the time of the initial filing, because this is at most a matter of weeks. If the waiver is not obtained at the time of the initial filing, there

[11] If "accumulated experience" is to be relied upon as a basis for either rule-making or adjudication, with no opportunity to cross-examine or rebut and without even an opportunity to know the facts on which the conclusion is based, due process of law in proceedings before the FPC will be as dead as the classical Dodo. But such is not the law. *Ohio Bell Telephone Co.* v. *PUC* (1937), 301 U.S. 292, 302, 57 S. Ct. 724; *Republic Aviation Corp.* v. *NLRB* (1945) 324 U.S. 793, 799-800, 65 S. Ct. 982; and *Burlington Truck Lines, Inc.* v. *U.S.* (1962) ...... U.S. ..... 83 S. Ct. 239, 244-246.

will never be a clause in the contract upon which the filing for waiver could later be made. The Orders at issue here require that such clauses be deleted before the original filing. Further, unless this Court acts now to invalidate such Orders, the question of waiver will be moot, because the Orders also provide that no pipe line certificate filing may be based on contracts which contain the proscribed provisions. Pipe line buyers cannot agree to such provisions.

Respondent contends that flexible price-changing clauses have induced filing of "floods of" rate increases not predicated on the economic needs of the producer at the time of filing (Brief, p. 13 and 19-20). This assumes that all price increases filed under any flexible pricing provision are *per se* not justifiable. The Commission itself has disproved this. In *Re: Phillips Petroleum Corp.,* Opinion No. 338, 24 FPC 537, the only major producer rate case which has reached a decision on its merits, the Commission found Phillips' jurisdictional costs exceeded its jurisdictional revenues by some nine million dollars during the test year. Many of the changes in rates consolidated in that docket were based on flexible increases.

IV.

Respondent relies for its action on certain non-Natural Gas Act cases for its rule making authority in this instance. As pointed out above, whatever rule making authority Respondent has must derive from the Natural Gas Act and that alone.

The case upon which Respondent seems to place greatest reliance is that of *United States* v. *Storer Broadcasting Co.* (1956), 351 U.S. 192, 76 S. Ct. 763. The *Storer* case arose under the Communications Act (47 U.S.C.A. 301, *et*

seq.). The regulatory scheme of that Act, which permitted the use of public domain for the public benefit by properly qualified applicants, was clearly to prevent a concentration of control of broadcasting facilities. Section 314 (47 U.S.C.A. 314) of that Act expressly forbids ownership or control of stations where the purpose or the effect thereof might be to substantially lessen competition or to restrain commerce. In the light of this, the Commission was clearly authorized to promulgate rules to further the Congressional directive expressed in the Act. Contrarywise, under the Natural Gas Act there is no use of public domain, but property rights of natural gas companies are being subjected to regulation. Under the Communications Act there can be no question of confiscation of private property protected by the Fifth Amendment, whereas under the Natural Gas Act the protection against confiscation is clear.[12] The Communications Act does not regulate rates of licensees. The Natural Gas Act does regulate rates, but contractually established rates are not abrogated by the Act and in fact must be allowed unless *after hearing* they are found unjust and unreasonable. The Acts are wholly different as to the rights and duties of the regulated companies and the Congressional directives to the regulating bodies.

American Trucking Associations, Inc. v. *United States* (1953), 344 U.S. 298, 73 S. Ct. 307, is also relied on by Respondent. This case arose under the Motor Carrier Act, (49 U.S.C.A. 1 *et seq.*) and is wholly inappropriate here. There was an extensive evidentiary hearing — more than 80 witnesses were heard (p. 307). There the *evidence* showed that the Act itself was being abused by the practice which was proscribed (p. 304). Neither of these situations

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[12] *Federal Power Commission* v. *Natural Gas Pipeline Co.* (1942), 315 U.S. 575, 585-6, 72 S. Ct. 736.

are present here. Here no evidentiary hearing was had, and the only real claim of the Commission is that its convenience will be served and its administration of the Act made easier. This is not an abuse of the Act.

The case of *W. J. Dillner Transfer Co.* v. *United States* (W. D. Pa., February 8, 1963), 31 U. S. Law Week 2414, is also relied on. This case is not in point. It held that a rate filing for uncertificated service could be rejected. A hearing had been held. Order 242 would reject both the certificate application and the rate filing, and both of these filings of Petitioner were rejected by the Secretary of the Commission without a hearing.

Wherefore, for the above reasons, and those set forth in the initial Brief of Petitioner, Petitioner prays that its relief initially sought be granted.

Respectfully submitted,

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April 1, 1963

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

....
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